



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration

- Preproposal Statement of Inquiry was filed as WSR: 15-19-135 ; or
- Expedited Rule Making--Proposed notice was filed as WSR: ___; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

Title of rule and other identifying information: (Describe Subject)

The Department is amending WAC 388-106-0010 "What definitions apply to this chapter?" and WAC 388-106-0135, "What is the maximum number of hours of personal care services that I can receive for in-home services?", and adding a new section WAC 388-71-0552 "What may happen if an individual provider (IP) claims more than the maximum hours assigned by the client in a work week?" to chapter 388-71 WAC, Home and Community Services and Programs.

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>

Date: **February 9, 2016** Time: **10:00 a.m.**

Date of intended adoption: Not earlier than February 10, 2016
(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185
by: 5:00 p.m. February 9, 2016

Assistance for persons with disabilities: Contact:
Jeff Kildahl, DSHS Rules Consultant by January 26, 2016
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department is amending WAC 388-106-0010 "What definitions apply to this chapter?" and WAC 388-106-0135, "What is the maximum number of hours of personal care services that I can receive for in-home services?", and adding a new section WAC 388-71-0552 "What may happen if an individual provider (IP) claims more than the maximum hours assigned by the client in a work week?" New U.S. Department of Labor rules may require the Department to pay overtime to Individual Providers (IPs). The proposed rules are one of a series of changes that will eventually enable the Department to pay overtime while also maximizing the effective use of limited state resources. The proposed rules change the allocation of personal care hours from a monthly basis to a weekly basis. They also describe how the Department may respond when IPs submit invoices for services that exceed the maximum weekly hours under a client's plan of care. The department anticipates additional rule-making in 2016 as it moves toward the payment of overtime.

Statutory authority for adoption: RCW 74.08.090, RCW 74.09.520

Statute being implemented: RCW 74.39A.400

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:
Home Care Assoc of America V David Weil

DATE
December 18, 2015

NAME (type or print)
Katherine Vasquez

SIGNATURE

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: December 22, 2015

TIME: 1:49 PM

WSR 16-01-179

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2525
Implementation:	Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2525
Enforcement:	Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2525

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone: ()

Fax: ()

e-mail

No. Explain why no statement was prepared.

The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or non-profits as a result of this rule amendment.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone: ()

fax: ()

e-mail:

No: Please explain:

Rules are exempt per RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

NEW SECTION

WAC 388-71-0552 What may happen if an individual provider (IP) claims more than the maximum hours assigned by the client in a work week? If an IP claims more than the maximum hours assigned by the client in a work week, the department may terminate the IP's contract or take other actions authorized by law or the IP's contract with the department.

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

- (a) Understood: You express ideas clearly;
- (b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;
- (c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);
- (d) Rarely/never understood: At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);
- (e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

- (a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.
- (b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.
- (c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:
 - (i) Foot care if you are diabetic or have poor circulation; or
 - (ii) Changing bandages or dressings when sterile procedures are required.
- (d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you receive, e.g. bringing food to you or cutting it up in smaller pieces.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or get in/out of a vehicle.

(l) Personal hygiene: How you maintain personal hygiene, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of assistance available for a task if status is coded:

(a) Partially met due to availability of other support; or

(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

(i) Less than one-fourth of the time;

(ii) One-fourth to one-half of the time;

(iii) Over one-half of the time to three-fourths of the time; or

(iv) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

~~(("Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.))~~ **"Blind"** has the same meaning as WAC 182-500-0015.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Health action plan" means an individual plan which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

"Decision making" means your ability to make, and actual performance in making, everyday decisions about tasks or activities of daily living in the last seven days before the assessment. The department determines whether you were:

(a) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions were poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making was severely impaired; you never/rarely made decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and disability administration or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider (IP)" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Informal support" means:

(a) Assistance that will be provided without home and community program funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs. Except for a situation in which the age of a child or shared benefit determines status, if a person is available and willing to provide unpaid assistance to a client, the department may consider the person to be a source of informal support, even if the person is also an individual provider for the client.

(b) Adult day health is considered a source of informal support, regardless of funding source.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

- (a) The design, delivery and evaluation of services and supports;
- (b) Exercising control of decisions and resources, making their own decisions about health and well being;
- (c) Determining how to meet their own needs;
- (d) Determining how and by whom these needs should be met; and
- (e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

- (a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;
- (b) In a building that you own;
- (c) In a relative's established residence; or
- (d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

- (a) Having a signed department contract to provide long-term care client services; and
- (b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Self-performance for ADLs is based on the level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADLs does not include physical assistance that occurred fewer than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and received assistance that involved physical nonweight bearing contact between you and your caregiver or guided maneuvering of limbs on three or more occasions.

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the activity, but not all, of the activity.

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is ~~((CARE information))~~ the part of the plan of care which includes: Contacts (e.g. emergency contact)((τ)); services for which the client is eligible(~~(-for τ)); ((number of hours or)) residential rates(τ) or the monthly hours and maximum hours a client may use in a work week; personal care needs(τ); the list of formal and informal providers and what tasks they will provide(τ); a provider schedule(τ); referral needs/information(τ); and dates and agreement to the services.~~

"Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

(a) That will be provided by informal supports; or

(b) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multi-client household; or

(c) That will be provided to a child primarily due to his or her age.

The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Shared benefit, which means:

(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household will benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the activity. (For ex-

ample, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

- (c) One-person physical assist provided;
- (d) Two- or more person physical assist provided; or
- (e) Activity did not occur during entire seven-day period.

"Work week" begins at 12:00 a.m. Sunday morning and ends at 11:59 p.m. the following Saturday night.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 14-10-077, filed 5/6/14, effective 6/26/14)

WAC 388-106-0135 What is the maximum number of hours of personal care services that I can receive for in-home services? (1) If you are age 21 or older, the maximum number of hours that you may receive is the base hours assigned to your classification group and adjusted per WAC 388-106-0130, unless additional hours are authorized through an exception to rule per WAC 388-440-0001. The service summary will tell you the maximum number of hours you may use in a work week. For chore program clients, the maximum personal care hours per month the department will authorize is one hundred sixteen (116).

(2) If you are under age twenty-one(+

~~(a) F))~~the maximum number of hours that you may receive will be the base hours assigned to your classification group and adjusted per WAC 388-106-0130, unless additional hours are authorized under parts ~~((2))3)~~~~((b))4)~~ or ~~((3))5)~~ below. The service summary will tell you the maximum number of hours you may use in a work week.

~~((b))3)~~ Additional hours may be authorized at the department's discretion through an exception to rule per WAC 388-440-0001. You may request additional hours of personal care services through an exception to rule by contacting your case manager and explaining why you do not believe the authorized hours provide adequate assistance with your personal care tasks. The case manager will document your request and forward the request for review per WAC 388-440-0001. You will be notified in writing of the decision.

(4) If you believe that a weekly care plan will be harmful to you, you may ask your case manager for a review of your situation. If, in its sole discretion, the department determines that weekly hours would cause a risk to your health and safety or your ability to remain living in the community, the department may authorize some flexibility in the way you can use your hours.

~~((3))5)~~ If you are under age twenty-one, the department will authorize additional hours of personal care services beyond those authorized under section ~~((2))3)~~ according to the limitation extension process described below. If the evidence shows that additional personal care assistance is necessary to correct, improve, or prevent further deterioration of your condition, the department will authorize additional hours in the amount required to fully complete your ADLs or IADLs.

(a) You may request a limitation extension in writing within 90 days after you have received the department's written decision under subsection ~~((2))3)~~~~((b))~~; or if 30 days have passed since you requested an exception to rule under subsection ~~((2))3)~~~~((b))~~ and you have not yet received a written decision from DSHS.

(b) You may submit any evidence to show that additional hours of personal care are necessary. The following evidence should be provided:

(i) An explanation of the hours necessary to complete your ADLs and IADLs;

(ii) Documentation of the supports available to you over the course of a week; and,

(iii) An explanation of why informal supports are unavailable to provide the additional assistance you are requesting. When you are living with your legally responsible parent, the considerations described in WAC 388-106-0130 (8)(d) apply to the determination of availability of informal supports.

(c) If requested by the department, you must also provide additional documentation of your situation. If requested documents are not reasonably available to you without cost and/or if you need assistance from the department to obtain the requested documents, you must provide written permission to the department to obtain the documents on your behalf. Documents that the department may ask for include the following:

(i) Your most recent individualized educational plan (IEP), if you are still in school.

(ii) Treatment plans for clinically recommended treatments relevant to your personal care services, such as active range of motion, passive range of motion, bowel program, etc.

(iii) Documents indicating residential time with your noncustodial parent or the availability of a noncustodial parent to provide assistance, such as parenting plans or child support orders. If those documents do not accurately reflect the supports currently available to you, you may also submit information or documents describing the support actually provided by your noncustodial parent.

(d) The department may also require a further review of your functional ability to perform specific ADLs and IADLs, to be conducted at the department's expense. The review must be completed under WAC 182-551-2110 by a qualified occupational therapist. If a qualified occupational therapist is not available to complete the review, the department will designate another qualified healthcare professional to complete the review.

(e) Upon receiving your request for a limitation extension and any additional supporting information you choose to submit under subsection ((3))5(b), the department will make a decision according to the timeline below.

(i) The department will make a decision under subsection (3) within 30 days unless additional information is required under subsections ((3))5(c) and/or ((3))5(d).

(ii) If additional information is required under subsections ((3))5(c) and/or ((3))5(d), the department will notify you of what additional information is required within 30 days of the date the department received your request and supporting information, if any. The department will then make a determination under subsection (3) within 15 days of either of the following, whichever comes first:

(A) The date that the department receives all of the requested information, including a report of any review of your functional ability conducted under subsection ((3))5(d); or,

(B) The date that you notify the department that you will not be providing any additional information.

(f) Additional hours will not be approved to substitute for the duties of legally responsible adults, replace child care or school,

replace recommended equipment available through medicaid, or provide supervision other than task-specific supervision necessary for you to perform an ADL or IADL.